

tractors to conduct business with the Federal Government by electronic means; and

(2) includes a description of the functions to be performed to achieve the mission of streamlining procurement through electronic commerce, the system elements and interfaces needed to perform the functions, and the designation of performance levels of those system elements.

(Pub. L. 93-400, §30, as added Pub. L. 103-355, title IX, §9001(a), Oct. 13, 1994, 108 Stat. 3399.)

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 252c, 426a of this title; title 10 section 2302c; title 40 section 1501.

§ 426a. Federal acquisition computer network implementation

(a) Certification of FACNET capability in procuring activities and agencies

(1) When the senior procurement executive of an executive agency or, in the case of the Department of Defense, the Under Secretary of Defense for Acquisition and Technology, determines that a procuring activity of the executive agency has implemented an interim FACNET capability (as defined in subsection (c) of this section), the executive or the Under Secretary shall certify to the Administrator that such activity has implemented an interim FACNET capability.

(2) When the head of an executive agency, with the concurrence of the Administrator for Federal Procurement Policy, determines that the executive agency has implemented a full FACNET capability (as defined in subsection (d) of this section), the head of the executive agency shall certify to Congress that the executive agency has implemented a full FACNET capability.

(3) The head of each executive agency shall provide for implementation of both interim FACNET capability and full FACNET capability, with priority on providing convenient and universal user access as required by section 426(b)(3)(C) of this title, in that executive agency as soon as practicable after October 13, 1994.

(b) Certification of Government-wide FACNET capability

When the Administrator for Federal Procurement Policy determines that the Federal Government is making at least 75 percent of eligible contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold entered into by the Government during the preceding fiscal year through a system with full FACNET capability, the Administrator shall certify to Congress that the Government has implemented a Government-wide FACNET capability.

(c) Implementation of interim FACNET capability

A procuring activity shall be considered to have implemented an interim FACNET capability if—

(1) with respect to each procurement expected to be in an amount greater than the micro-purchase threshold and not greater than the simplified acquisition threshold, the procuring activity has implemented the FACNET functions described in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and (2)(C) of section 426(b) of this title; and

(2) for each such procurement (other than a procurement for which notice is not required under section 416(c) of this title or with respect to which the head of the procuring activity determines that it is not cost effective or practicable), the procuring activity issues notices of solicitations and receives responses to solicitations through a system having those functions.

(d) Implementation of full FACNET capability

An executive agency shall be considered to have implemented a full FACNET capability if (except in the case of procuring activities (or portions thereof) of the executive agency for which the head of the executive agency determines that implementation is not cost effective or practicable)—

(1) the executive agency has implemented all of the FACNET functions described in section 426(b) of this title; and

(2) more than 75 percent of the eligible contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold entered into by the executive agency during the preceding fiscal year have been made through a system with those functions.

(e) Eligible contracts

For purposes of subsections (b) and (d) of this section, a contract is eligible if it is not in any class of contracts determined by the Federal Acquisition Regulatory Council (pursuant to section 9004 of the Federal Acquisition Streamlining Act of 1994) to be unsuitable for acquisition through a system with full FACNET capability.

(Pub. L. 93-400, §30A, as added Pub. L. 103-355, title IX, §9001(a), Oct. 13, 1994, 108 Stat. 3400.)

REFERENCES IN TEXT

Section 9004 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (e), is section 9004 of Pub. L. 103-355, which is set out below.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective Date of 1994 Amendment note under section 251 of this title.

GAO DETERMINATION OF ELIGIBLE AGENCY CONTRACTS

Section 9004 of Pub. L. 103-355 provided that:

“(a) REPORT ON CONTRACTS NOT SUITABLE FOR ACQUISITION THROUGH FULL FACNET CAPABILITY.—Not later than 3 years after the date of the enactment of this Act [Oct. 13, 1994], the Comptroller General shall submit to the Administrator for Federal Procurement Policy and the congressional committees referred to in subsection (d) a report on the classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold that are not suitable for acquisition through a system with full FACNET capability.

“(b) FAR COUNCIL DETERMINATIONS.—Not earlier than 3 years after the date of the enactment of this Act [Oct.

13, 1994], and after consideration of the report of the Comptroller General required by subsection (a), the Federal Acquisition Regulatory Council (established by section 25 of the Office of Federal Procurement Policy Act [41 U.S.C. 421]) may make a determination that a class or classes of contracts in amounts greater than the micro-purchase threshold and not greater than the simplified acquisition threshold are not suitable for acquisition through a system with full FACNET capability. Any such determination shall be submitted to the congressional committees referred to in subsection (d). Each determination under this subsection shall take effect 60 days after the date on which it is submitted to those committees.

“(c) **APPLICABILITY OF DETERMINATIONS.**—Each determination under subsection (b) shall apply for purposes of determining eligible contracts under section 30A(e) of the Office of Federal Procurement Policy Act, as added by section 9001 [41 U.S.C. 426a(e)].

“(d) **COMMITTEES.**—The report required by subsection (a), and any determination made under subsection (b), shall be submitted to the Committees on Governmental Affairs, on Armed Services, and on Small Business of the Senate and the Committees on Government Operations [now Government Reform and Oversight], on Armed Services [now National Security], and on Small Business of the House of Representatives.

“(e) **DEFINITIONS.**—In this section:

“(1) The term ‘simplified acquisition threshold’ has the meaning provided by section 4(11) of the Office of Federal Procurement Policy Act [41 U.S.C. 403(11)], as amended by section 4001.

“(2) The term ‘micro-purchase threshold’ has the meaning provided by section 32(g) [now 32(f)] of the Office of Federal Procurement Policy Act [41 U.S.C. 428(f)], as added by section 4301.

“(3) The term ‘full FACNET capability’ has the meaning described in section 30A(d) of the Office of Federal Procurement Policy Act [41 U.S.C. 426a(d)], as added by section 9001(a).”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 416, 426, 427 of this title; title 15 section 637.

§ 427. Simplified acquisition procedures

(a) Requirement

In order to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors, the Federal Acquisition Regulation shall provide for—

(1) special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold; and

(2) special simplified procedures for purchases of property and services for amounts greater than the simplified acquisition threshold but not greater than \$5,000,000 with respect to which the contracting officer reasonably expects, based on the nature of the property or services sought and on market research, that offers will include only commercial items.

(b) Prohibition on dividing purchases

A proposed purchase or contract for an amount above the simplified acquisition threshold may not be divided into several purchases or contracts for lesser amounts in order to use the simplified acquisition procedures required by subsection (a) of this section.

(c) Promotion of competition required

In using simplified acquisition procedures, the head of an executive agency shall promote competition to the maximum extent practicable.

(d) Consideration of offers timely received

The simplified acquisition procedures contained in the Federal Acquisition Regulation shall include a requirement that a contracting officer consider each responsive offer timely received from an eligible offeror.

(e) Special rules for use of simplified acquisition procedures

The simplified acquisition procedures provided in the Federal Acquisition Regulation pursuant to section 2304(g)(1)(A) of title 10, section 253(g)(1)(A) of this title, and subsection (a)(1) of this section may not be used by an agency after December 31, 1999, for contracts in amounts greater than \$50,000 and not greater than the simplified acquisition threshold until a certification has been made pursuant to section 426a(a)(2) of this title that the agency has implemented a full FACNET capability.

(f) Interim reporting rule

Until October 1, 1999, procuring activities shall continue to report under section 417(d) of this title procurement awards with a dollar value of at least \$25,000, but less than \$100,000, in conformity with the procedures for the reporting of a contract award greater than \$25,000 that were in effect on October 1, 1992.

(g) Special rules for commercial items

The Federal Acquisition Regulation shall provide that, in the case of a purchase of commercial items using special simplified procedures, an executive agency—

(1) shall publish a notice in accordance with section 416 of this title and, as provided in subsection (b)(4) of such section, permit all responsible sources to submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(2) may not conduct the purchase on a sole source basis unless the need to do so is justified in writing and approved in accordance with section 2304 of title 10 or section 253 of this title, as applicable; and

(3) shall include in the contract file a written description of the procedures used in awarding the contract and the number of offers received.

(Pub. L. 93-400, §31, as added Pub. L. 103-355, title IV, §4201(a), Oct. 13, 1994, 108 Stat. 3342; amended Pub. L. 104-106, div. D, title XLII, §4202(c), title XLIII, §4302(b), Feb. 10, 1996, 110 Stat. 653, 658; Pub. L. 104-201, div. A, title X, §1074(b)(6), Sept. 23, 1996, 110 Stat. 2660.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104-106, §4202(c)(1), as amended by Pub. L. 104-201, substituted “shall provide for—” and pars. (1) and (2) for “shall provide for special simplified procedures for contracts for acquisition of property and services that are not greater than the simplified acquisition threshold.”

Subsec. (e). Pub. L. 104-106, §4302(b)(2), substituted “pursuant to section 2304(g)(1)(A) of title 10, section 253(g)(1)(A) of this title, and subsection (a)(1) of this section” for “pursuant to this section”.

Pub. L. 104-106, §4302(b)(1), designated subsec. (e)(2)(B) as entire subsec. and struck out former pars. (1) and (2)(A) which read as follows:

“(1) **EFFECT OF INTERIM FACNET CAPABILITY.**—The simplified acquisition procedures provided in the Federal